

REMARKS

The Office Action dated May 12, 2008, and the patents and published patent applications cited therein have been carefully reviewed, and in view of the following remarks reconsideration and allowance of all the claims pending in the application are respectfully requested.

Claims 1-20, 22-24 and 26 stand rejected. By this Response, no claims have been amended or canceled, and claims 1-20, 22-24 and 26 remain pending.

The Rejection Under 35 U.S.C. § 103(a) Over Yanai In View Of Kawamura

Claims 1, 4-7, 10, 13-15, 18-20, 24 and 26 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Yanai et al. (Yanai), U.S. Patent No. 6,502,205 B1, in view of Kawamura et al. (Kawamura), U.S. Patent Application Publication No. 2004/0193658 A1.

Applicant respectfully traverses this rejection. Applicant respectfully submits that the subject matter according to any of claims 1, 4-7, 10, 13-15, 18-20, 24 and 26 is patentable over Yanai in view of Kawamura. In particular, Applicant respectfully submits that the Examiner has not presented a convincing line of reasoning as to why an artisan would have found the claimed subject matter of the present patent application to have been obvious in light of the teachings of Yanai and Kawamura because if the combination of Yanai and Kawamura is formed, the resulting device and method are not the claimed subject matter of any of claims 1, 4-7, 10, 13-15, 18-20, 24 and 26.

“To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). (See, also, MPEP §§ 706.02(j) and 2144.)

At page 3, line 21, through page 4, line 4, of the Office Action dated May 12, 2008, the Examiner states that, regarding independent claims 1, 7, 10, 15 and 20:

“... Yanai is silent with respect to asynchronously remotely copying each respective log record write from the primary site to the remote site; receiving an acknowledgement at the primary site, the acknowledgement corresponding to a log record write that has been completed at the remote site; and asynchronously remotely copying each data record write having a sequential identification of the log record write corresponding to the received acknowledgement.”

In view of the Examiner’s admission that Yanai lacks many of the features of independent claim 1, it follows that the Examiner is not stating that Yanai expressly or impliedly suggests the subject matter of any of claims 1, 7, 10, 15 and 20. Further, the Examiner has not stated that Kawamura expressly or impliedly suggests the subject matter of independent claims 1, 7, 10, 15 and 20. Accordingly, the Examiner must be relying on a combination of Yanai and Kawamura to form the subject matter of claims 1, 4-7, 10, 13-15, 18-20, 24 and 26.

Regarding independent claim 1, the Examiner admits that “Yanai is silent with respect to asynchronously remotely copying each respective log record write from the primary site to the remote site” (See Office Action dated May 12, 2008, page 3, line 21, through page 4, line 4.) Consequently, if the combination of Yanai in view of Kawamura is to provide these particular aspects of independent claim 1, then Kawamura must disclose or suggest this and other features of claim 1 that Yanai lacks.

The Examiner asserts that paragraphs [0016] and [0054], lines 13-18, of Kawamura discloses asynchronously remotely copying each respective log record write from the primary site to the remote site. (See Office Action dated May 12, 2008, page 4, lines 4-6.) Applicant respectfully submits that the Examiner’s reliance on these two paragraphs of Kawamura as disclosing asynchronously remotely copying each respective log record write from the primary site to the remote site is without basis.

Applicant respectfully submits that paragraph [0016] of Kawamura is merely the heading “(b) Log Asynchronous and DB Asynchronous Method” in the Background of the Invention section of Kawamura. In paragraph [0017], Kawamura discloses a system (“conventional” with

respect to the Kawamura system) in which the log and DB are transferred asynchronously to a remote site, but suffers from the drawback that the modification contents of the transactions are sometimes lost in the remote site. (See Kawamura, paragraph [0017], lines 6-11.) Further, paragraph [0019] of Kawamura discloses that if the log and DB are transferred to the remote site asynchronously, then the performance degradation in the main site is slight, but there is a problem that modification contents of transactions that have been completed in the main site are sometimes lost in the remote site. Thus, in actuality, paragraph [0017] of Kawamura refers to a “conventional” system (“conventional” with respect to Kawamura) in which the log and DB are transferred asynchronously to a remote site, but has the drawback that sometimes the modification contents of the transactions are sometimes lost in the remote site. Plainly, paragraphs [0017] and [0019] of Kawamura teach away from the concept of a log block that is asynchronously transferred to a remote site.¹

Considering paragraph [0054] of Kawamura, the other paragraph relied on by the Examiner as disclosing asynchronously remotely copying each respective log record write from the primary site to the remote site, Applicant respectfully submits that lines 5-18 of paragraph [0054] of Kawamura are:

“If in the case of the present embodiment the received write request is a write request of the log block 262a, then the primary remote copy processing section 212 conducts synchronous write processing of the log block 262 into a secondary disk subsystem 4. If the received write request is a write request of the log block 242a or status information, then the primary remote copy processing section 212 temporarily stores the write request and conducts asynchronous write processing into the secondary disk subsystem 4.” [Underlining added.]

Applicant respectfully submits that the first reference to a log block in paragraph [0054] is to a “log block 262a.” The second reference to a log block is to a “log block 242a.” Applicant respectfully submits that the reference to “log block 242a” is a typographical error and, as such,

¹ It is also noted that none of paragraphs [0016]-[0018] of Kawamura disclose or suggest the claimed subject matter of the present patent application.

would be properly understood by one skilled in the art to really be a reference to a “DB block 242a.” Support for the conclusion of that “log block 242a” is a typographical error can be found throughout Kawamura. For example, in all cases, except one (i.e., the noted typographic error instance in paragraph [0054] that is at issue), reference indicator “242a” is associated with a DB block. That is, nowhere other than in paragraph [0054] of Kawamura does Kawamura refer to a log block 242a. (See Kawamura, paragraphs [0053], [0062], [0067], [0070], [0075], [0096], [0099], [0110], [0127] and [0128].) Further, in all cases, reference indicator 262a is associated with a log block, not a DB block. (See, Kawamura, paragraphs [0036], [0050], [0053], [0054], [0062], [0067], [0069], [0071]-[0074], [0086], [0089], [0096], [0098] and [0110].) Thus, in only one instance is a log block associated with the reference indicator “242a,” and in no instances is a DB block associated with reference indicator “262a”.

Further, in all instances in which Kawamura refers to a writing process of a log block to a secondary disk subsystem, the writing process is a synchronous writing process, except in paragraphs [0016], [0017] and [0019], [0054, i.e., the typographic error at issue] and [0110]. (See, Kawamura, paragraphs [0036], [0054], [0071], [0072], [0082], [0098], [0106], [0112] and [0124].) The instances in paragraphs [0016], [0017] and [0019] relate to systems that are “conventional” with respect to the Kawamura system and are taught away from by Kawamura. The instance in paragraph [0054] at issue appears to relate to an embodiment of the Kawamura system in which the writing process of a log block is disclosed to be a synchronous writing process, even though there is no other disclosure, complementary or elaborative, by Kawamura. Plainly, this instance is an oddball instance when the disclosure of Kawamura is considered in its entirety, and can be nothing other than a typographical error,

Thus, one of skill in the art would properly understand the reference in paragraph [0054] of Kawamura to “log block 242a” to really mean “DB block 242a”. Moreover, Applicant respectfully submits that the Examiner’s assertion that Kawamura discloses asynchronously remotely copying each respective log record write from a primary site to a remote site is without basis because Kawamura teaches away from asynchronously remotely copying each respective log record write from the primary site to the remote site. (See, Kawamura, paragraphs [0016],

[0017], [0019], [0110] and [0130].) That is, Kawamura discloses that asynchronously copying log blocks and DB blocks suffers from the drawback that the modification contents of the transactions are sometimes lost in the remote site.

It follows that Kawamura does not disclose or suggest a method comprising: asynchronously remotely copying each respective log record write from the primary site to the remote site. Thus, if the combination of Yanai and Kawamura is formed, the resulting device and method are not the claimed subject matter of claim 1 because neither Yanai nor Kawamura disclose or suggest a method comprising: asynchronously remotely copying each respective log record write from the primary site to the remote site. Applicant respectfully submits that independent claim 1 is allowable because neither Yanai nor Kawamura disclose or suggest a method comprising: asynchronously remotely copying each respective log record write from the primary site to the remote site. It follows that claims 4-6, which incorporate the features of claim 1, are each allowable over Yanai in view of Kawamura for at least the same reasons that claim 1 is considered allowable.

Regarding independent claims 7, 10, 15 and 20, Applicant respectfully submits that each of claims 7, 10, 15 and 20 are allowable over Yanai in view of Kawamura for reasons that are similar to the reasons that claim 1 is considered allowable. It follows that claims 13, 14, 18, 19, 24 and 26, which incorporate the features of their respective base claims, are each allowable over Yanai in view of Kawamura for at least the same reasons that their respective base claims are considered allowable.

Applicant respectfully submit that it is only by impermissible hindsight that the Examiner is able to reject claims 1, 4-7, 10, 13-15, 18-20, 24 and 26 based on Yanai in view of Kawamura. The Examiner does not state that either Yanai or Kawamura expressly or impliedly suggests the claimed subject matter. Moreover, the Examiner has not presented a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of Yanai and Kawamura. Thus, it is only by using Applicants' disclosure as a template that the Examiner is able to select particular features of Yanai and Kawamura through a hindsight reconstruction of Applicant's claims to make the rejection.

Consequently, Applicant respectfully requests that the Examiner withdraw this rejection and allow claims 1, 4-7, 10, 13-15, 18-20, 24 and 26.

**The Rejection Under 35 U.S.C. § 103(a) Over Yanai
In View Of Kawamura And Further In View Of Shomler**

Claims 2, 3, 8, 9, 11, 12, 16, 17, 22 and 23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Yanai in view of Kawamura and further in view of Shomler, U.S. Patent No. 5,623,599.

Applicant respectfully traverses this rejection. Applicant respectfully submits that the subject matter according to any of claims 2, 3, 8, 9, 11, 12, 16, 17, 22 and 23 is patentable over Yanai in view of Kawamura and further in view of Shomler because Shomler does not cure the deficiencies of Yanai and Kawamura with respect to claims 1, 7, 10, 15 and 20, the base claims of claims 2, 3, 8, 9, 11, 12, 16, 17, 22 and 23.

In particular regarding claim 1, Applicant respectfully submits that, as previously demonstrated, Shomler does not disclose or suggest a method comprising at least asynchronously remotely copying each respective log record write from the primary site to the remote site.

Consequently, Applicant respectfully requests that the Examiner withdraw this rejection and allow claims 2, 3, 8, 9, 11, 12, 16, 17, 22 and 23.

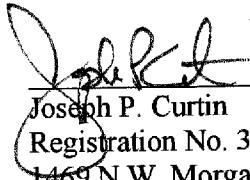
Applicant respectfully notes that additional patentable distinctions between Yanai, Kawamura and Shomler and the rejected claims exist; however, the foregoing is believed sufficient to address the Examiner's rejections. Additionally, failure of Applicant to respond to a position taken by the Examiner is not an indication of acceptance or acquiescence of the Examiner's position. Instead, it is believed that the Examiner's positions are rendered moot by the foregoing and, therefore, it is believed not necessary to respond to every position taken by the Examiner with which Applicant does not agree.

CONCLUSION

In view of the above amendments and arguments, it is urged that the present application is now in condition for allowance. Should the Examiner find that a telephonic or personal interview would expedite passage to issue of the present application, the Examiner is encouraged to contact the undersigned attorney at the telephone number indicated below.

It is requested that this application be passed to issue with claims 1-20, 22-24 and 26.

Respectfully submitted,



Joseph P. Curtin
Registration No. 34,571
1469 N.W. Morgan Lane
Portland, Oregon 97229-5291
(503) 296-8373
(503) 297-0452 (facsimile)

Date: September 17, 2008